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Chairman: Mr. Simon ..... (Hungary)

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The meeting was called to order at 10.10 a.m.

Agenda item 142: Convention on jurisdictional immunities of States and their property (*continued*) (A/59/22)

1. **Mr. Kupchyshyn** (Ukraine) said that the establishment of unified rules on jurisdictional immunities of States and their property would bring stability and transparency to the commercial transactions between States and individuals. The international community had recognized the importance of the question in the context of increased direct participation of sovereign States in international trade. A unified jurisdictional immunity regime would promote the uniformity of international trade transactions and would offer, both to States and to individuals, a broad legal system covering a great variety of matters, including matters arising from judicial proceedings.

2. Ukraine welcomed the recommendation of the Ad Hoc Committee on Jurisdictional Immunities of States and their Property that the General Assembly should adopt the draft United Nations convention on jurisdictional immunities of States and their property. The convention would thus be rendered binding and directly applicable by domestic courts. Clear rules on jurisdictional immunities would be established, the proliferation of different domestic regimes would be checked, and an authentic codification of the subject would become available.

3. **Mr. Lauber** (Switzerland), after reviewing the various stages of the work which had culminated after half a century in the approval of the draft convention, said that the draft articles marked a milestone in the codification and progressive development of international rules on the topic. Their approval would enhance the clarity, transparency and safety of the legal rules governing what was an important question for the maintenance of good relations between States.

4. The definition of "commercial transaction" (art. 2, para. 2) distinguished between acts iure imperii and acts iure gestionis. That was a compromise formula but it had several advantages, for it recognized the importance of the practice of the State of the forum and did not imply interference in the right of the parties to a contract to submit it to the national jurisdiction of their choice in accordance with the principles of private international law.

5. The solution contained in draft article 10, paragraph 3, with respect to State enterprises was satisfactory. That provision should be read in the light of the common understanding set out in the annex to the draft convention concerning "piercing the corporate veil".

6. The question of contracts of employment addressed in article 11 had been the subject of many debates. In that case as well the annex to the draft Convention contained a common understanding. Although it might seem cumbersome, the procedure envisaged for cases in which a State argued its "security interests" (art. 11(d)) provided a balanced solution which took into account the interests of the employee and of the employer State.

7. Although article 19 (c), on post-judgement measures of constraint, provided that there must be a connection between the entity against which the proceedings had been initiated and the property against which the measures of constraint were to be taken, the concept had not been defined with sufficient clarity. It would thus be interesting to observe the evolution of the jurisprudence when the rule was applied in practice.

8. **Mr. Dahal** (Nepal) said that the draft convention was the culmination of 25 of years of work by the International Law Commission and the Sixth Committee. Its adoption by the General Assembly would make a significant contribution to the codification and progressive development of international law and the harmonization of the practice of States with respect to jurisdictional immunities. The rules would strengthen the rule of law and legal safety, especially in the relations between States and natural and legal persons.

9. The draft articles were particularly important in the context of globalization and dispute settlement. A balance had been struck between the interests of developed and developing countries; the draft articles would promote the interests of the developing countries where their commercial activities were concerned.

10. His delegation endorsed the general understanding that the point that the draft convention did not cover criminal acts should be addressed in a

resolution of the General Assembly. The draft convention should be adopted by consensus at the Assembly's present session and opened for signature by States. The commentary produced by the Commission, the reports of the Ad Hoc Committee and the Chairman's statement would constitute an important part of the preparatory work in connection with the draft convention and would help to overcome any difficulties which might emerge in the interpretation of its rules.

11. **Ms. Zabolotskaya** (Russian Federation) said that the provisions of the draft convention regulated one of the most important and complicated aspects of international law which for decades had given rise to disputes and practical problems in the relations between States. It had become apparent during the work on the draft convention that, given the political will, States could find constructive solutions for the most difficult and sensitive issues.

12. The draft articles confirmed the absolute jurisdictional immunity of heads of State and of diplomatic missions and their personnel. Of equal importance was the understanding that measures of constraint could not be taken against the property of diplomatic missions or consular offices.

13. The draft convention should be adopted at the present session of the General Assembly and opened for signature by States. It was to be hoped that it would become a universal international agreement which would enhance the organization of international legislation on jurisdictional immunities of States and their property.

14. **Mr. Kanu** (Sierra Leone) said that his delegation welcomed the consensus reached on the draft convention. That consensus was the fruit of cooperation among States with different legal systems. The draft articles displayed the necessary precision and clarity for the systematic application of their provisions.

15. Although not perfect, the draft articles were the satisfactory outcome of the compromises made by States in order to overcome the legal difficulties presented by various questions of international law, corporate trade law and commercial practices. They should be adopted at the present session of the General Assembly. With regard to the future interpretation of the text, the Commission's commentary, the Ad Hoc Committee's reports and the General Assembly resolution would form an important part of the preparatory work in connection with the convention.

16. **Mr. Medrek** (Morocco) said that his delegation welcomed the approval of the draft articles. They provided an international instrument acceptable to all and were the fruit of more than two decades of work in the Commission. A uniform international regime had at last been established to ensure the stability of the relations between States and give them greater confidence and safety with respect to jurisdictional immunities.

17. The adoption of the draft articles in the form of a convention would guarantee respect for the rules thus established, help to check the proliferation of varying national legislation on the subject, and introduce the uniformity, legal safety and homogeneity essential to the development of international trade. It would be desirable for the General Assembly to adopt the draft convention at the present session.

18. **Mr. Dolatyr** (Islamic Republic of Iran) said that the hard work done by the Commission, the Ad Hoc Committee and the Sixth Committee on the drafting of a uniform legal regime on jurisdictional immunities of States and their property demonstrated that the international community could not and should not take domestic legislation as the basis for setting the limits to such immunities, for that approach caused uncertainty and disputes between States.

19. His delegation agreed with the Ad Hoc Committee's recommendations concerning the adoption of the draft convention. Allowing reservations to the convention would not facilitate the unification of the relevant national laws or the rule of law in international relations, which had been the principal objective during long years of negotiation. All States must therefore be encouraged to sign and ratify the convention without submitting reservations. The General Assembly should include that consideration in the draft resolution on the convention.

20. **Ms. Anh** (Vietnam) said that Vietnam attached great importance to the question of jurisdictional immunities of States and their property and that the draft convention was a fairly balanced document. It reflected as far as possible the positions of the various States and groups of States. Vietnam endorsed the recommendation contained in paragraph 13 of the Ad Hoc Committee's report (A/59/22) that the General Assembly should adopt the draft convention. Once in

force, the convention would strengthen the rule of law and legal safety and would contribute both to the work on the codification and progressive development of international law and to the harmonization of the practice of States with respect to jurisdictional immunities.

21. **Mr. Peh Suan Yong** (Malaysia) said that the draft convention reflected the opinions of the countries which, like Malaysia, had taken part in the Ad Hoc Committee's debates. His delegation reiterated its concern about the provision contained in article 2, paragraph 2, which set out the criteria for determining the commercial character of a contract or transaction and established that such a determination depended mainly on the nature of the contract or transaction and that its purpose was a secondary criterion to be considered only if the parties to the contract or transaction so agreed or if in the practice of the State which was a party to the contract or transaction its purpose was relevant to determining its non-commercial character. In fact, both criteria should be taken into consideration in determining the commercial character of a transaction; that had been the practice of Malaysian courts when ruling on disputes concerning immunities of States.

22. **The Chairman** said that the Committee had thus concluded its discussion of agenda item 142.

Agenda item 141: Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives (*continued*) (A/59/125 and Add.1; A/C.6/59/L.14)

23. **Ms. Sotaniemi** (Finland) introduced the draft resolution on consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives (A/C.6/59/L.14); it was sponsored by the 60 countries listed in the draft resolution, which had now been joined by Uganda.

24. The international community remained confronted by violations of the security and safety of diplomatic and consular missions and representatives, and there had been an increase in acts of violence, such as bomb attacks on embassies, since the adoption of the last resolution on the item. The purpose of the draft resolution was to demonstrate the determination of States to prevent such violations in the future. It was also intended to draw attention to violations in order to help to strengthen the protection of diplomatic and consular missions and representatives. To that end she appealed to Member States to comply with the reporting procedures contained in the draft resolution. The sponsors wished the draft resolution to be adopted without a vote.

Agenda item 143: Report of the United Nations Commission on International Trade Law on the work of its thirty-seventh session (*continued*) (A/59/17; A/C.6/59/L.11 and L.12)

25. **Mr. Buehler** (Austria) introduced the draft resolution on the report of the United Nations Commission on International Trade Law on the work of its thirty-seventh session (A/C.6/59/L.11); the draft resolution listed the large number of sponsors. After pointing out that the draft resolution was very similar to the one adopted in 2003 (General Assembly resolution 58/75 of 9 December), he proceeded to review its content.

26. **The Chairman** introduced the draft resolution prepared by the Bureau on the Legislative Guide on Insolvency Law of the United Nations Commission on International Trade Law (A/C.6/59/L.12). After outlining its content, he said that the Committee would take the necessary action on draft resolutions A/C.6/59/L.11 and L.12 in due course.

The meeting rose at 11 a.m.